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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NO. 659

JOHN SANTANGELO, *Petitioner*

vs.

DOMENICA ERCOLANI SANTANGELO, *Respondent*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID GOLDSTEIN,
Counsel for Respondent.
955 Main Street
Bridgeport, Conn.

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OPINIONS BELOW

The unreported memorandum of decision of the Superior Court on the respondent's (wife) demurrer to the petitioner's (husband) plea to the jurisdiction (R. 14); the unreported memorandum of decision of the Superior Court (R. 19); the unreported judgment of the Superior Court in each case (R. 31 and R. 61); the opinion of the Supreme Court of Errors of the State of Connecticut (R. 66) reported in 137 Conn. 404, 78 A 2d 245, (decided, Jan. 9, 1951).

JURISDICTION

The judgment of the Supreme Court of Errors of the State of Connecticut was entered on January 9, 1951 (R. 70, 71). The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

QUESTIONS PRESENTED

The petitioner has presented a single question which in fact embodies the question of (a) the collateral attack made by the alien respondent, in the Connecticut court, upon the Nevada decree of the petitioner (b) the alleged laches of the respondent in challenging the Nevada decree and (c) the effect of this decision upon the three children of the petitioner.

STATEMENT

The respondent wife, Domenica Ercolani Santangelo, and the petitioner husband, John Santangelo, were married in Italy in 1920 and continued to live there together until 1922. In 1922 the petitioner left Italy for America, telling respondent that he would send for her when he had established himself. The petitioner then went to Argentina, Chile, Panama and Boston. After living with his brother in Norwalk, Connecticut, for a short period, he lived in Yonkers, New York and worked there in the building trade until 1931. In April of 1932 he established his home in Stamford, Connecticut. Between 1922 and 1932 he supported the respondent by sending her part of his earnings. During all of this time they corresponded with each other. In 1932 he received his citizenship papers and petitioned the United States State Department for an immigration visa for the respondent, but she was never informed of this. He sent her neither money nor steamship tickets for her passage. She continued to write to him until 1935, always expressing a desire to come to the United States. He answered no letters after May, 1932. In 1931 the petitioner met Carrie Altorelli and thereafter became intimate with her. She assisted him in his song publishing business in Stamford. *On July 18, 1935 Charles was born to them.* On April 23, 1935, *three months before the birth of Charles,* the petitioner started an action for divorce against the respondent in Fairfield County, Connecticut, (on the grounds of adultery). This action was

abandoned by John Santangelo on June 4, 1937. In July of 1936 the petitioner and Carrie Altorelli *left together for Reno,* arriving there on July 20, 1936. He did not discontinue his song publishing business in Stamford, Connecticut, nor did he close out either of his bank accounts in Stamford and White Plains. From July 20, 1936 until some time in November, 1936 the petitioner lived in Reno, either at a tourist home on the outskirts of Reno or at a hotel in Reno and while there conducted his business from a room adjoining the tourist home. During all of the time that he remained in Reno he made no arrangements regarding the forwarding of his mail. He did not establish any credit accounts in stores; joined no social, political or religious organizations; he did not bring to Reno, nor did he buy any furniture or household goods. On September 2, 1936, *exactly 45 days after arrival in Reno,* he started his action for divorce against the respondent. The respondent was served in San Valentino, Italy on September 22, 1936. On October 23rd the petitioner appeared in the Reno court and obtained a decree of divorce on the grounds that the respondent was guilty of extreme cruelty, and of living apart from her husband without cohabitation for more than five years. All the while, the petitioner's action for divorce against the respondent was pending in the Superior Court in Fairfield County. The respondent did not appear in the Reno proceedings. Upon leaving Reno in November of 1936, the petitioner and Carrie Altorelli proceeded to Harrison, New York and were there purportedly married on January 2, 1937, and ever since they have lived together in Connecticut. On January 12, 1938 a daughter Elsie and on October 3, 1942 a son John was born to the petitioner and to Carrie Altorelli.

On September 20, 1945 the respondent, while residing in San Valentino, Italy, instituted her action in Connecticut against her husband for non-support. On May 21, 1948 the respondent arrived in this country under a temporary visa duly issued to her by the United States Department of Immigration, and on August

12, 1948 she instituted her action for a divorce and for alimony against the petitioner.

These facts were not contradicted. The petitioner offered no evidence whatsoever bearing on his questioned Nevada domicil. The opinion of the Connecticut Supreme Court (R. 66) recited that "The finding is not attacked;" that "The plaintiff's evidence warranted the Court's Conclusion," and that "The defendant offered no evidence to controvert it." (R. 66, 67.)

CONSTITUTIONAL CLAUSE INVOLVED

Full Faith and Credit Clause, United States Constitution, Article IV, Section I.

ARGUMENT

Application of Full Faith and Credit Clause to Migratory Divorces

The State of Connecticut, by virtue of Article IV, Section 1 of the Constitution of the United States, is required to give "Full Faith and Credit" . . . "to judicial Proceedings of every other State." The decision of the Connecticut Supreme Court in this case is squarely in line with the decisions of this Court in matters pertaining to migratory divorces. *Williams* vs. *No. Carolina* (I) 317 U. S. 287; *Williams* vs. *No. Carolina* (II) 325 U. S. 226; *Davis* vs. *Davis*, 305 U. S. 32; *Sherrer* vs. *Sherrer*, 334 U. S. 343; *Coe* vs. *Coe*, 334 U. S. 378; *Rice* vs. *Rice*, 336 U. S. 674; *Esenwein* vs. *Penn.*, 325 U. S. 279, 281; *Johnson* vs. *Muelberger*, U. S., Sup. Ct., decided March 12, 1951. The *Williams case (II)*, supra at 229, stated that "A judgment in one State is conclusive upon the merits in every other State, but only if the Courts of the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment."

On March 12, 1951, this Court stated that:

(a). "It leaves each State with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with *jurisdiction*," (italics ours).

(b). "We believe that the decision of this Court in the Davis case and those in related situations are clearly indicative of the result to be reached here. Those cases stand for the proposition that the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister State where there has been *participation by the defendant in the divorce proceedings*, where *the defendant has been accorded full opportunity to contest the jurisdictional issues*, and where *the decree is not susceptible to such collateral attack in the Courts of the State which rendered the decree*." (Italics ours.) Citing: *Coe* v. *Coe*, 334, U. S. 378; cf. *Estin* v. *Estin*, 334 U. S. 541.

(c). "It is clear from the foregoing that, under our decisions, a state by virtue of the clause must give full faith and credit to an out-of-state divorce by barring either party to that divorce, who has been personally served or who has entered a personal appearance, from collaterally attacking the decree."

Johnson v. *Muelberger*, U. S. Supreme Court, October Term 1950, decided March 12, 1951.

In *Rice* vs. *Rice*, 336 U. S. 674, at 675, this Court held that "Our statement in the *Esenwein* opinion, 325 U. S. at 281, that 'It is not for us to retry the facts, and we cannot say that in reaching their conclusion the (Connecticut) courts did not have warrant in evidence and did not fairly weigh the facts,' is appropriate here." The instant case involves the validity in Connecticut of a Reno decree obtained in an ex-parte proceeding wherein the respondent (wife) did not appear in person or by attorney. The Connecticut courts have found that at the time of the Nevada decree (1936) Nevada was not the bona fide domicile of either party; that the

burden of proving this was upon the respondent wife and that she sustained that burden in accordance with the standards laid down by this Court in the Rice case, Supra. This is the extent of the Full Faith and Credit clause, and since the Nevada decree was not based upon proper jurisdiction of the parties by the Nevada Court, there is no substantial Federal question involved in the petitioner's appeal to this Court. The Reno decree involved in the instant case was in fact outside of the protection of the Full Faith and Credit clause and it became solely a question for the Connecticut Courts to determine the effect to properly be given to the Reno decree in the Connecticut Courts. *Williams* vs. *No. Carolina* (II) Supra; *Glaser* vs. *Glaser,* 276 N. Y. 296; 12 N. E. 2d 305; *Hellmuth* vs. *Hellmuth,* 98 Fed. 2d 431; *Atkinson* vs. *Atkinson,* 82 Fed. 2d 847; *Rice* vs. *Rice,* Supra, 134 Conn. 440, 445.

The Alien Status of Respondent

Petitioner would have this Court instruct Connecticut to deny to the respondent the right to sue in the Connecticut courts because she is an admitted alien. The lower court, in passing on this question, stated that Connecticut courts are open to "every person" (R. 68). *Mings* v. *People ex rel. McCune,* 111 Ill. 98, 100; *Artman* v. *Artman,* 111 Conn. 124, 126, 149 A. 246; see *Riggs* v. *Riggs,* 91 Kan. 593, 595, 138 P. 628; *2 Beale, Conflict of Laws* § *454.1* et seq. The Connecticut Constitution uses the precise words "every person." *Conn. Const., Article First, Sec. 12**; *Paquin, Ltd.* v. *Westervelt,* 93 Conn. 513, 516, 106 A. 766; *Janusis* v. *Long,* 284 Mass. 403, 405, 188 N. E. 228; *Sliosberg* v. *New York Life Ins. Co.,* 244 N. Y. 482, 491, 155, N. E. 749.

The public policy of the United States is to the same effect. "The doors of our Courts have not been shut to peaceable law-abiding aliens seeking to enforce rights growing out of legal occupations." *Ex Parte Kawato,* 317 U. S., 69, 78 (Black, J.).

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*Appendix B

Civil Rights Act 8 U. S. C., Sec. 41; *Roberts* v. *Hartford Fire Insurance Co.*, 177 Fed (2d) 811, 814.

Judge Crane, in *Dean* vs. *Dean*, 241 N. Y. 240, 149 N. E. 844 states that "The policy of the State of New York, I venture to assert, is in the maintenance of marriage and morality. These will be aided by affording the wife relief in our courts, rather than by turning her out, when we know she can get help nowhere else. I know of no authority which holds that the general policy of this state limits its aid to its own citizens." *Dean* vs. *Dean*, supra, 242; see also opinion of Cardoza, J., in same case.

The specific New York cases, cited by the petitioner, are distinguishable in that they represent the public policy applied by the State of New York to certain restricted situations. *Dean* vs. *Dean*, supra; see also *Melvin* vs. *Melvin*, 129 Fed. (2d) 39 (Rutledge, J.).

The respondent complied with the jurisdictional requirements of the State of Connecticut in bringing these actions. *General Statutes of Conn. (Rev. of 1949) Secs. 7327, 7334.**

The lower court stated that "unless the plaintiff has this right she is remediless" (R. 67).

"The courts have generally accorded to alien friends the same privileges of suit that they have extended to citizens or subjects of the forum." *2 Am. Juris., Aliens, Sec. 59, P. 494.* ". . . The court may not deny the right of an alien to sue unless restrained by legislative fiat." *3 C.J.S., Aliens, Sec. 9 (2), P. 534.* "Presence within the jurisdiction is not essential to the exercise of such privilege, but it is extended to a foreigner not within our borders." *Janusis* vs. *Long*, Supra 405; *Peabody* vs. *Hamilton*, 106 Mass. 217, 220; *State* vs. *Sinchuk*, 96 Conn. 605, 624: 115 A. 33.

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*Appendix A

To contend that the respondent can institute an action for non-support and divorce, as has been conceded by the petitioner but that in so doing she may not attack the Nevada decree, in effect gives her a mere fictitious right to litigate her causes of action under such limitations, restrictions and qualifications as will preclude her from properly presenting any evidence pertaining to the issues in dispute. *Sherman* vs. *F.S.A.*, 166 Fed. (2d) 451, 455.

The Claim of Laches

The petitioner urges upon this Court the view that "laches" presents a basis for review by this Court of the Connecticut judgments. The trial court concluded that "One child had already been born to this couple prior to the rendition of the Reno decree. It hardly lies in such a man's mouth to charge the plaintiff wife with laches for not preventing him from proceeding to raise a family with another woman while married to the plaintiff." (R. 28.) The existence of laches as a defense was a question of fact for the trial court. The trial court gave no credence whatsoever to such a defense. The Connecticut Supreme Court did not disturb the finding of the trial court (R. 66). See 12 A.L.R. (2d) 153, 155 (R. 69). ". . . certainly the application of laches and the statute of limitations does not present a Federal question." *Wood* v. *Chesborough*, 228 U. S. 672, 677. No principle of equity, justice or public policy can be found which would lend merit to the defense of laches on the part of one guilty of the conduct of the petitioner in this case.

The Three Children of Petitioner and of Carrie Altorelli

Certainly Carrie Altorelli is entitled to no consideration. The eldest child, Charles, was born on July 18, 1935, *one year prior* to the date when petitioner and Carrie Altorelli went to Reno. The second child, Elsie, was born on January 12, 1938, one year after the marriage of petitioner and Carrie Altorelli in January of

1937, and the third child, John, was born on October 3, 1942. The obvious policy of the Connecticut Courts is to protect and sustain the admittedly valid first marriage between petitioner and respondent in Italy in 1920. The risks undertaken by petitioner and Carrie were both deliberate and calculated. Petitioner in his brief seeks to impose upon this Court a purely sympathetic argument regarding the children. It has no place in the determination of the judicial issues presented here. The intermarriage of Carrie Altorelli and John Santangelo after the conclusion of this litigation will give legitimacy and equal inheritance rights to their three children in accordance with the Connecticut Statute law. *General Statutes of Connecticut, Revision of 1949, Sec. 7058.** "If there are any complications growing out of the husband's remarriage, he has brought them upon himself and has not the law to blame." *Dean* vs. *Dean,* Supra, at page 242. The only marital status involved in these instant proceedings is that of the respondent's marriage to the petitioner and she has sought protection and rights consistent with due process of law.

CONCLUSION

We submit that this is not a proper case for review by the Supreme Court of the United States. The judgments reached by the Connecticut courts are just, correct and in accordance with authority.

The Petition for Writ of Certiorari should be denied.

April 23, 1951.

Respectfully submitted,

DAVID GOLDSTEIN,
Counsel for Respondent.

LOUIS EVANS
EDWARD W. COHEN
JACK H. EVANS
Of Counsel.
New Haven, Conn.

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*Appendix A

APPENDIX A

Applicable Portions of the General Statutes of Connecticut, Revision of 1949

Sec. 7327. Divorces, when granted. "The superior court shall have exclusive jurisdiction of all complaints for divorce, . . ."

Sec. 7334. What residence necessary to give jurisdiction. "If the planitiff shall not have continuously resided in this state three years next before the date of the complaint, it shall be dismissed unless the cause of divorce shall have arisen subsequently to the removal into this state, *or unless the defendant shall have continuously resided in this state three years next before the date of the complaint and actual service shall have been made upon him,* . . ." (Italics ours.)

Sec. 7058. Order of distribution. "After distribution shall have been made to the husband or wife of the intestate of such portion or share of the estate of the intestate as such husband or wife is entitled to by law, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children and the legal representatives of any of them who may be dead, except . . . *Children born before marriage whose parents afterwards intermarry shall be deemed legitimate* and inherit equally with other children." (Italics ours.)

APPENDIX B

Applicable Provision of the Connecticut Constitution

Article First, Section 12. (Declaration of Rights.) "All courts shall be open, and every person, for an injury done him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

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